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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 257

ED C. WRIGHT,

Petitioner,

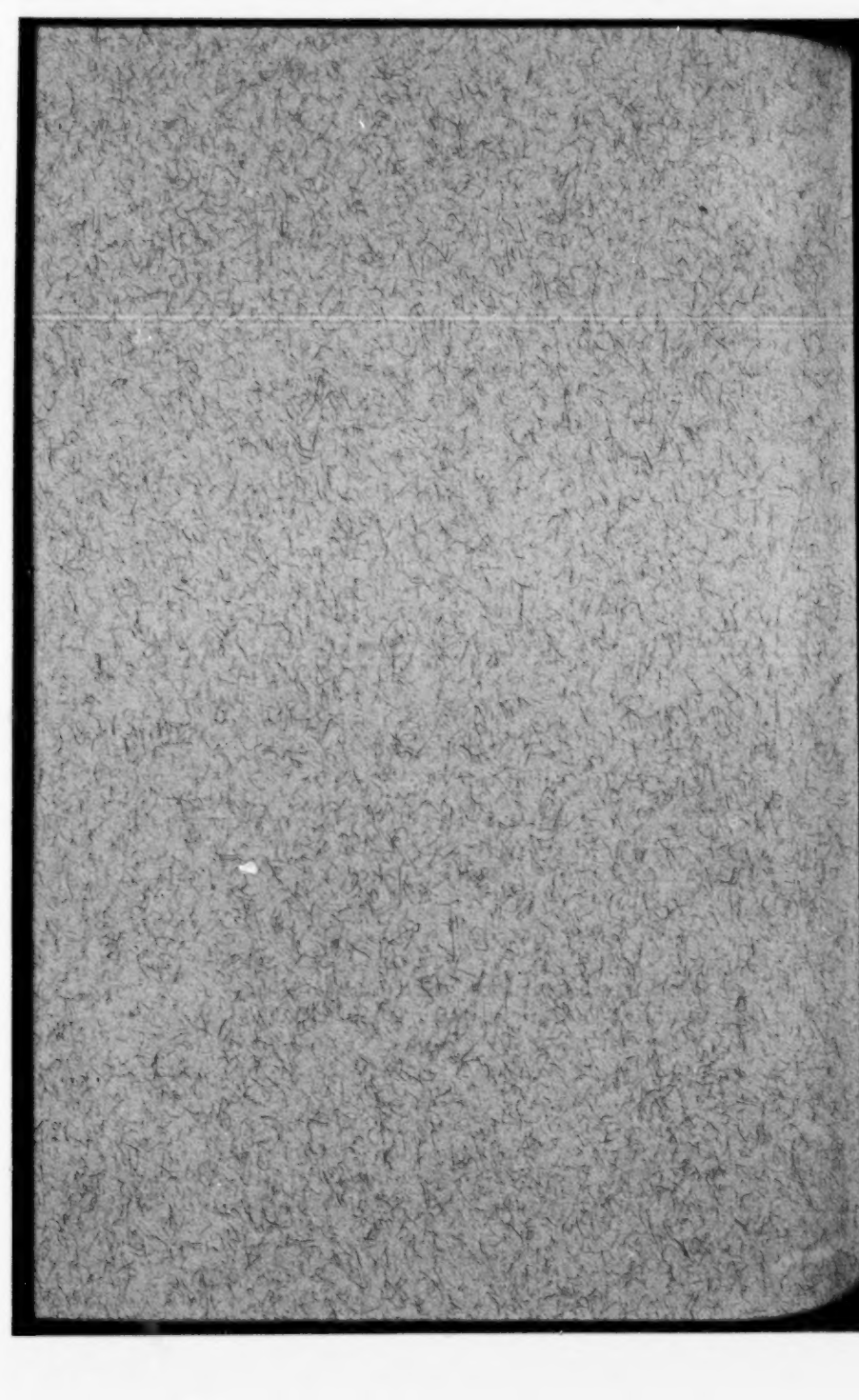
vs.

BOARD OF PUBLIC INSTRUCTION FOR THE
COUNTY OF BROWARD, STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT
THEREOF.

MILLER WALTON,

Counsel for Petitioner.



INDEX

SUBJECT INDEX

	Page
Petition for writ of certiorari	1
Summary statement	1
Statement of jurisdiction	9
Questions presented	11
Reasons relied on for allowance of writ	12
Prayer for writ	13
Brief in support of petition	15
Opinion of the court below	15
Statement of jurisdiction	15
Statement of the case	16
Specification of errors	16
Argument in support of petition	16
Point I—The decision sought to be reviewed is in conflict with the decisions of the Circuit Court of Appeals for the Second Circuit in <i>In re M. D. Mirsky & Co., Inc.</i> , 32 F. 2d 676, and <i>Sedeman v. Friedman</i> , 132 F. 2d 290, the decision of the Circuit Court of Appeals for the Eighth Circuit in <i>Central States Life</i> <i>Ins. Co. v. Koplar Co.</i> , 85 F. 2d 181, and the decision of the Circuit Court of Appeals for the Fifth Circuit in <i>Green v. City of Stuart</i> , 135 F. 2d 33	16
Point II—The questions presented are impor- tant and controlling jurisdictional questions governing not only the administration of public debtor compositions under Chapter IX of the Bankruptcy Act, but also corpo- rate reorganizations under Chapter X, and arrangements under Chapter XI, and have not been, but should be, settled by this Court	19
Point III—A court of bankruptcy is not in- vested with jurisdiction to adjudge the validity or invalidity of securities that were not affected by the fully executed plan of	

	Page
composition, to adjudge whether or not there can be any recovery, or the extent to which there may be a recovery, on such securities, and to render and coerce satisfaction of a money judgment on them, or to perpetually enjoin their enforcement.	20
Point IV—A court of bankruptcy cannot exercise, by consent, a jurisdiction that was not conferred by either the Congress or the fully executed plan.	23
Point V—By deciding that the District Court possesses "discretion," in a municipal composition proceeding, to adjudge whether or not Petitioner can recover on securities that were not affected by the fully executed plan of composition, and whether or not he should be released from an injunction perpetually restraining the commencement of actions on securities affected by the plan, the Court of Appeals has so far sanctioned a departure from the accepted and usual course of judicial proceedings in a court of bankruptcy, as to call for the exercise by this Court of its power of supervision.	25

TABLE OF CASES CITED

<i>American United Mut. L. Ins. Co. v. Avon Park</i> , 311 U. S. 143.	11, 17
<i>Ashton v. Cameron Co. W. Imp. Dist.</i> , 298 U. S. 513.	17, 22
<i>Aztec Min. Co. v. Ripley</i> , 151 U. S. 79.	11
<i>Central States Life Ins. Co. v. Koplar Co.</i> , 8 Cir., 85 F. 2d 181.	12, 17
<i>City of Coral Gables v. Wright</i> , 320 U. S. 729.	11
<i>Consolidated Rock Products Co. v. DuBois</i> , 312 U. S. 510.	11
<i>Cutler v. Rae</i> , 7 How. 729.	25
<i>Ecker v. Western P. R. Corp.</i> , 318 U. S. 448.	11
<i>Exporters of Mfrs.' Products v. Butterworth-Judson Co.</i> , 258 U. S. 365.	25
<i>Fraenkl v. Cerecedo</i> , 216 U. S. 295.	25
<i>Forsyth v. City of Hammond</i> , 166 U. S. 506.	11
<i>Green v. City of Stuart</i> , 5 Cir., 135 F. 2d 33.	12, 17, 21, 22

	Page
<i>Group of Institutional Investors v. Chicago M. St. P. & P. R. Co.</i> , 318 U. S. 523.....	11
<i>Kelley v. Everglades Drainage Dist.</i> , 319 U. S. 415.....	11
<i>Lau Ow Bew v. U. S.</i> , 144 U. S. 47.....	11
<i>Leco Properties v. Crummer</i> , 5 Cir., 128 F. 2d 110.....	21, 22
<i>M. D. Mirsky & Co., Inc., In re</i> , 2 Cir., 32 F. 2d 676..	12
<i>Minnesota v. Northern Securities Co.</i> , 194 U. S. 48.....	25
<i>People's Bank v. Winslow</i> , 102 U. S. 256.....	25
<i>Roberts v. Board</i> , 5 Cir., 117 F. 2d 943.....	4
<i>Seedman v. Friedman</i> , 2 Cir., 132 F. 2d 290.....	12
<i>Stratton v. St. Louis S. W. R. Co.</i> , 282 U. S. 10.....	25
<i>Title Guaranty & Surety Co. v. U. S.</i> , 222 U. S. 401....	11
<i>The Lucy v. U. S.</i> , 8 Wall. 307.....	25
<i>Turner v. Board</i> , 5 Cir., 75 F. 2d 147.....	3
<i>U. S. v. Beekins</i> , 304 U. S. 27.....	17, 21, 22
<i>Valley v. Northern F. & M. Ins. Co.</i> , 254 U. S. 348...	25
<i>Ware v. Crummer</i> , 5 Cir., 128 F. 2d 114.....	21, 22
<i>Warner v. New Orleans</i> , 167 U. S. 467.....	11
<i>Wright v. Board</i> , 5 Cir., 142 F. 2d 577.....	6, 25
<i>Wright v. Board</i> , 5 Cir., 148 F. 2d 367.....	2, 7, 10, 12, 15
<i>Young v. Higbee Co.</i> , — U. S. — (No. 342, October Term, 1944, decided February 26, 1945).....	11

STATUTES CITED

Bankruptcy Act of 1938:

Ch. IX.....	17, 20, 21, 24
Ch. X.....	19, 20
Ch. XI.....	19, 20
§ 82.....	12, 17, 18, 19, 25
§ 83.....	24
§ 83(a).....	12, 17, 18, 19
§ 83(c).....	21
§ 83(e).....	20
§ 83(f).....	21
§ 107.....	18
§ 369.....	18

Bankruptcy Act of 1898, as amended:

§ 12.....	17
§ 77B(b)(10).....	12, 18

Judicial Code, §240(a), as amended by Act of February

13, 1925, c. 229, §1, 43 Stat. 938.....	9
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No. 257

ED C. WRIGHT,

Petitioner,

vs.

BOARD OF PUBLIC INSTRUCTION FOR THE
COUNTY OF BROWARD, STATE OF FLORIDA

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.**

*To Honorable Harlan Fiske Stone, Chief Justice of the
United States, and the Associate Justices of the Supreme
Court of the United States:*

Petitioner, Ed C. Wright, respectfully shows the Court:

I

Summary Statement

Note: The complete record is comprised of five Court of Appeals records numbered 7551, 9381, 9596, 10607 and 11209. References to them are by record number and page therein.

Petitioner seeks review of a decision¹ (11209, pp. 14-21) that the District Court possesses "discretion," in a municipal composition proceeding, to adjudge whether or not he can recover on securities that were not affected by the fully executed plan of composition, and whether or not he should be released from an injunction perpetually restraining the commencement of actions on securities affected by the plan. He urges that because the securities were unaffected by the plan, the District Court never had "jurisdiction" of them, lacking which it does not possess and cannot exercise "discretion" concerning his rights as holder. (11209, pp. 10-11, 22-26)

The plan (9381, pp. 11-18) offered to refund the principal of, and cancel past due interest on, outstanding obligations itemized in a "List of Indebtedness to be Affected by Plan of Composition" (9381, pp. 8-11), including only \$237,000 of a \$250,000 bond issue. (9381, pp. 8, 12) It did not offer to refund the \$13,000 numbered 66/78, nor propose that the rights of their holder be adjusted or modified in any manner, and expressly limited the refunding bonds that the Board agreed to authorize, validate, and exchange for bonds, to a total of \$237,000. (9381, pp. 12-13) The only reference to bonds 66/78, in the petition, plan, or list, was that the list showed their serial numbers in proper sequence, followed by the description: "Void-Turner Suit." (9381, p. 8) Substantially the same information was given in a separate list of "Creditors Who Have Not Accepted Plan of Composition" (9381, pp. 25-27), but that list also did not offer to refund the bonds, nor propose that the rights of their holder be adjusted or modified in any manner. (9381, p. 25)

The description "Void-Turner Suit" resulted from the effect that the Board erroneously attributed to the proceed-

¹ *Wright v. Board*, 5 Cir., 148 F. 2d 367.

ings, judgment, and appellate decision,² in an action by N. A. Turner, a former holder of the bonds, who mistakenly deemed them invalid, and sued unsuccessfully, before they were due, to recover for money had and received in selling them. (7551, pp. 1-154) Although Turner also sought to recover for money had and received in selling bonds 86 and 90 (7551, p. 3), the plan offered to refund them (9381, pp. 8, 12-13), but the offer was later withdrawn by amendment. (9596, pp. 66, 80)

Petitioner's then corporation, to which he is successor (10607, p. 34), submitted proofs of claim on numerous obligations (9596, pp. 58-62), including bonds 66/78. (9596, p. 58) Albert Roberts, theretofore an officer of the corporation, who had acted for it in various capacities (9596, pp. 239-241), filed a proof of claim on past due coupons from bonds owned by the corporation (9596, pp. 62-63), including coupons from bonds 66/78 (9596, p. 63), and objected that the plan discriminated unfairly in favor of principal, as against past due interest, by providing for the refunding of the former and cancellation of the latter. (9381, pp. 49-53)

The Board objected to both claims, insofar as they pertained to bonds 66/78 and appurtenant coupons, on the ground that in the *Turner* case, the verdict, judgment, and affirmance of the judgment, had conclusively determined that the Board was not indebted thereon (9381, pp. 58-60), and on the ground that the Board had "not listed in its petition as indebtedness affected by the Plan of Composition, said bonds Nos. 66 to 78 inclusive, and interest coupons and interest thereon, on account of the verdict and judgment and affirmance of the Appellate Court above referred to, and any right that the said creditor might have under such bonds and coupons will not be affected by the

² *Turner v. Board*, 5 Cir., 75 F. 2d 147.

Plan of Composition in this suit; as no provision has been made for offering refunding bonds in exchange" therefor. (9381, pp. 58, 60)

By amendment of the petition, plan, and "List of Indebtedness to be Affected by Plan of Composition" (9596, pp. 80-81, 66-77), the Board offered to refund only \$235,000 of the \$250,000 issue. (9596, pp. 70, 75-76) The amended petition, plan, and list, omitted all reference to, and did not mention nor describe, the \$15,000 numbered 66/78, 86 and 90, did not offer to refund them, nor propose that the rights of their holders be adjusted or modified in any manner, and expressly limited the refunding bonds that the Board agreed to authorize, validate, and exchange for bonds, to a total of \$235,000. (9596, pp. 70, 75-76)

Petitioner's former corporation did not participate in the subsequent proceedings. (9596, pp. 229, 235, 378; 10607, p. 36) They resulted in the Master reporting bonds 66/78 "Disallowed as void bonds" (9596, p. 263), and in the Judge finding that "the holders of such bonds and coupons cannot recover against the Petitioner, and such bonds and coupons are not refundable hereunder." (9596, p. 394)

The amended plan was confirmed by an interlocutory decree (9596, pp. 403-409) which expressly affected only the claims "set forth in said Plan of Composition as Amended and therein stated to be affected thereby." (9596, p. 404) Pending the delivery and distribution of the refunding bonds and the entry of a final decree, the interlocutory decree enjoined "all persons, firms and corporations," from commencing any action on "bonds or warrants mentioned in said Plan of Composition as being affected thereby, or on any interest coupons appertaining thereto." (9596, p. 408)

Petitioner's former corporation did not appeal. Roberts did (9596, pp. 415-416). The Court of Appeals affirmed³

³ *Roberts v. Board*, 5 Cir., 117 F. 2d 943, certiorari denied, 313 U. S. 582.

on the ground that the corporation owned the coupons and was the real party in interest, for which reason Roberts had no standing to appeal.

While the appeal was pending, Petitioner's former corporation moved the District Court for a declaration that bonds 66/78 were not affected by the plan, and for permission to sue in the State Court. (10607, pp. 20-25) The motion was denied before the appeal was decided. (10607, pp. 25-26)

Upon being notified of the Board's application for a final decree (10607, pp. 28-34), Petitioner moved for the inclusion in the decree of a finding that the bonds and appurtenant coupons were not affected by the plan or decree, and for the dissolution of any injunction against bringing suit on them, or in the alternative, that he be permitted to litigate their "validity" in the composition proceeding. (10607, pp. 34-38)

The final decree (10607, pp. 38-44) found that the Board had fully executed the plan by making available to the affected creditors "all the securities and money deliverable" under the amended plan (10607, p. 41); discharged the Board from all debts and liabilities "affected by said Plan of Composition, as amended" (10607, p. 43); perpetually enjoined the holders of securities "affected by the Plan of Composition" from instituting any action or suit thereon (10607, pp. 42-43), and concluded by providing that: "The questions whether bonds numbers 66 to 78, inclusive, * * * and the unpaid interest coupons originally thereto annexed, are valid or invalid, and whether they are affected by the Plan of Composition or proceedings herein, are not hereby adjudged or determined, nor are the rights of the holders thereof adjudged or determined by this decree, and the Court hereby reserves jurisdiction to adjudge and determine the validity of said bonds and coupons, as well as the rights of the holder thereof, and further reserves jurisdic-

tion to enforce such rights, if any, in such manner as the Court may deem equitable and just, and directs that the matters as to which jurisdiction is so reserved shall be litigated in this Court." (10607, p. 43, par. 10)

Following the subsequent adducing of evidence that was not considered, Petitioner's motion was denied on the ground that the matters it presented were concluded by the interlocutory decree and the order denying the former corporation permission to sue in the State Court. (10607, pp. 44-45)

The Court of Appeals reversed,⁴ holding: (1) the securities were not adjudged void in the *Turner* case; (2) they are valid and have never been paid; (3) reconsideration of the disallowance of the claim on the securities was not precluded by the interlocutory decree, nor by the failure of the former corporation to appeal therefrom, nor by the order denying the corporation permission to sue in the State Court, nor by the affirmance of the interlocutory decree in Roberts' appeal—the latter because the part of the decree which disallowed the claim was not challenged; (4) the District Court had "jurisdiction in its discretion, if equity and justice so" required, to reconsider the disallowance of the proof of claim on the bonds, "or" to release Petitioner "from the injunction against a suit on them if it be true that the claim is unaffected by the composition," and also had "power to consider or reconsider" questions that the opinion expressly suggested, but did not decide, and to grant such relief as in its discretion ought to be granted.

The Court of Appeals expressly left undetermined, for future consideration by the District Court, the questions: (1) whether or not there was an estoppel by judgment because of the judgment in the *Turner* case; (2) whether or not there was an estoppel *in pais* because of admissions in

⁴ *Wright v. Board*, 5 Cir., 142 F. 2d 577.

the *Turner* case that the bonds were invalid; (3) whether or not, after the petition, plan, and "List of Indebtedness to be Affected by Plan of Composition," were amended "so as to exclude the bonds from the debts to be composed," the Master and Judge had "authority" to decide their validity as claims in the composition proceeding.

The case went back to the District Court (11209, pp. 3-6), which adjudged: (1) there is no estoppel by judgment because of the judgment in the *Turner* case; (2) there is no estoppel *in pair* because of admissions in the *Turner* case that the bonds were invalid; (3) the Board "intended" that the plan should compose all of its bonded debt; (4) the District Court has jurisdiction, in the composition proceeding, to adjudge whether or not Petitioner can recover on the securities, and should and would make the adjudication; (5) the Board would be afforded an opportunity "to present other evidence" preliminary to any decision of the question of recovery. (11209, pp. 6-9)

Petitioner appealed from two parts of the Order: (1) the part adjudicating that the District Court has jurisdiction, in the composition proceeding, to adjudge whether or not he can recover on the securities; (2) the part adjudicating that the Board would be permitted to adduce "other evidence" preliminary to any decision of the question of recovery. (11209, pp. 9-11)

The Court of Appeals affirmed,⁵ holding: (1) the Board "did not propose, in its plan of composition, to refund the bonds nor to pay nor to compose any obligation thereon;" (2) the plan had been "fully completed with no provision therein to refund the bonds of Appellant, nor to pay, nor to compose, his indebtedness;" (3) the District Court has jurisdiction to determine whether or not the securities were "affected by the plan," and has not lost that jurisdiction;

⁵ *Wright v. Board*, 5 Cir., 148 F. 2d 367.

(4) the "effect of the plan upon the interest of a creditor," rather than the "intent of the bankrupt," is the "controlling factor" in deciding whether or not the securities were "affected by the plan;" (5) in being forced to litigate the question of "recovery" in the composition proceeding, rather than in a separate action of which the District Court would not have jurisdiction, Petitioner "is getting what he asked;" (6) there is no "good reason" why the District Court may not adjudge the question of recovery, "irrespective of any present inability to include Appellant's bonds in a plan of composition which has been fully completed;" (7) should the District Court hold that the securities were not included in the plan to be either composed, refunded, or paid, it would then seem that Petitioner's interests were not included in, nor affected by, the plan, and that the orders made in the composition proceeding relative to the securities would not preclude him from the pursuit of any judicial remedies that he might have outside of the composition proceeding, and in that event, the District Court doubtless would modify its injunction to the extent of permitting him to sue in an appropriate court for the "principal" of the bonds; (8) the District Court "still has a right to inquire" whether the failure of Petitioner's former corporation to except to the Master's Report, or to present "such" exceptions to the Judge, or to appeal from the "order" that the bonds and appurtenant coupons were not refundable and the holder could not recover on them, "reveal such a lack of vigilance as to persuade the Court that justice and equity do not now require a reconsideration of the disallowance of the proof of Appellant's claim, or the release of claimant from the injunction against a suit on the bonds;" (9) involved in the issues before the District Court is the question "whether or not Appellant is estopped to claim a right to recover on the interest coupons originally attached to the

said bonds in view of the assertions in the bankruptcy proceedings and before this Court that Roberts, a person in privity with Wright, or an agent of Wright, was the owner of these coupons;" (10) the District Court may receive evidence as to "whether or not Wright is now estopped to insist upon the right to collect interest coupons heretofore asserted to have been the property of Roberts, under a transfer deemed by the Court to have been colorable;" (11) the "burden of explaining the inconsistencies and of establishing the integrity and consequent equities of his position is upon Appellant if he now continues to assert the right to collect on the interest coupons;" (12) because the District Court made the pronouncements of "invalidity, non-recoverability, and unrefundability," it is appropriate that the District Court be resorted to first, "for any correction or clarification of such pronouncement, for if the lower Court should later hold (as it logically may, in view of the fact that the plan of composition has been fully executed) that Appellant has the right to proceed by suit in another forum, it is highly essential to its prosecution that the suit be not adjudged to be in the nature of a collateral attack upon the aforementioned adjudications of the court in bankruptcy;" (13) there has, "as yet," been no abuse of "discretion" by the District Court. (11209, pp. 14-21)

Petitioner submitted a petition for rehearing or clarification (11209, pp. 22-26), which was denied May 4, 1945. (11209, p. 27)

II

Statement of Jurisdiction

The jurisdiction of this Court is invoked under § 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, § 1, 43 Stat. 938 (28 U. S. C. A. § 347(a)),

conferring on this Court jurisdiction to issue writs of certiorari to review judgments or decrees of the Circuit Courts of Appeals.

The decision sought to be reviewed was rendered April 6, 1945, by the United States Circuit Court of Appeals for the Fifth Circuit.⁶ (11209, pp. 14-21.) A petition for rehearing or clarification (11209, pp. 22-26), was denied May 4, 1945 (11209, p. 27.)

The decision of the Court of Appeals affirmed (11209, pp. 14-21) an adjudication by the District Court of the United States for the Southern District of Florida, that the latter has jurisdiction, in a municipal composition proceeding under Chapter IX of the Bankruptcy Act, to adjudge, and that it should and would adjudge, whether or not Petitioner can recover on securities that were not affected by the fully executed plan of composition, and whether or not he should be released from an injunction perpetually restraining the commencement of actions on securities affected by the plan. (11209, pp. 6-9.) The Court of Appeals decided that the District Court possesses "discretion" to make the adjudication, notwithstanding the fact that the plan of composition had been "fully completed with no provision therein to refund the bonds of Appellant, nor to pay, nor to compose, his indebtedness," (11209, p. 17) and "irrespective of any present inability to include Appellant's bonds in a plan of composition which has been fully completed." (11209, p. 19.)

The questions presented by this Petition are important and controlling jurisdictional questions governing not only the administration of composition proceedings by public debtors, under Chapter IX of the Bankruptcy Act, but also corporate reorganizations under Chapter X, and arrangements under Chapter XI, and have not been, but

⁶ *Wright v. Board*, 5 Cir., 148 F. 2d 367.

should be, settled by this Court. They involve: (1) the source, scope, extent, and limits, of the jurisdiction of a court of bankruptcy to adjudge the validity or invalidity of securities that were not affected by the fully executed plan of composition; (2) the jurisdiction of a court of bankruptcy to adjudge whether or not there can be any recovery, or the extent to which there may be a recovery, on securities concerning which the fully executed plan did not propose nor provide that the rights of the holders be adjusted or modified in any manner, and to render and coerce satisfaction of a money judgment on the securities, or to perpetually enjoin their enforcement; (3) the ability of a claimant to confer on a court of bankruptcy, by consent, a jurisdiction that was not conferred by either the Congress or the fully executed plan.

Counsel believes and urges that the jurisdiction of this Court to issue a writ of certiorari to review the decision of the Court of Appeals is sustained by *Lau Ow Bew v. U. S.*, 144 U. S. 47, *Aztec Min. Co. v. Ripley*, 151 U. S. 79, *Forsyth v. City of Hammond*, 166 U. S. 506, *Warner v. New Orleans*, 167 U. S. 467, *Title Guaranty & Surety Co. v. U. S.*, 222 U. S. 401, *American United Mut. L. Ins. Co. v. Avon Park*, 311 U. S. 143, *Consolidated Rock Products Co. v. Du Bois*, 312 U. S. 510, *Ecker v. Western P. R. Corp.*, 318 U. S. 448, *Group of Institutional Investors v. Chicago, M. St. P. & P. R. Co.*, 318 U. S. 523, *Kelley v. Everglades Drainage Dist.*, 319 U. S. 415, *City of Coral Gables v. Wright*, 320 U. S. 729, *Young v. Higbee Co.*, — *U. S.* — (No. 342, October Term, 1944, decided February 26, 1945).

III

Questions Presented

1. Is a court of bankruptcy invested with jurisdiction to: (a) adjudge the validity or invalidity of securities

that were not affected by the fully executed plan of composition; (b) adjudge whether or not there can be any recovery, or the extent to which there may be a recovery, on securities concerning which the fully executed plan did not propose nor provide that the rights of the holders be adjusted or modified in any manner, and (c) render and coerce satisfaction of a money judgment on the securities, or perpetually enjoin their enforcement?

2. Can a claimant confer on a court of bankruptcy, by consent, a jurisdiction that was not conferred by either the Congress or the fully executed plan?

IV

Reasons Relied on for Allowance of Writ

1. The decision sought to be reviewed was rendered by the Circuit Court of Appeals for the Fifth Circuit⁷ (11209, pp. 14-21), and is in conflict with the decisions of the Circuit Court of Appeals for the Second Circuit in *In re M. D. Mirsky & Co., Inc.*, 32 F. 2d 676 (certiorari denied 280 U. S. 579), applying former § 12 of the Bankruptcy Act, and *Seedman v. Friedman*, 132 F. 2d 290, applying § 369 of the present Act, the decision of the Circuit Court of Appeals for the Eighth Circuit in *Central States Life Ins. Co. v. Koplar Co.*, 85 F. 2d 181, applying former § 77-B(b)(10), and the decision of the Circuit Court of Appeals for the Fifth Circuit in *Green v. City of Stuart*, 135 F. 2d 33 (certiorari denied 320 U. S. 769, rehearing denied 320 U. S. 813), applying §§ 82 and 83(a) of the Bankruptcy Act, which govern compositions by public debtors.

2. The questions presented are important and controlling jurisdictional questions governing not only the administration of public debtor compositions under Chap-

⁷ *Wright v. Board*, 5 Cir., 148 F. 2d 367.

ter IX of the Bankruptcy Act, but also corporate reorganizations under Chapter X, and arrangements under Chapter XI, and have not been, but should be, settled by this Court.

3. The questions presented involve the source, scope, extent, and limits, of the jurisdiction of a court of bankruptcy to adjudge the validity or invalidity of securities that were not affected by the fully executed plan of composition, to adjudge whether or not there can be any recovery, or the extent to which there may be a recovery, on such securities, and to render and coerce satisfaction of a money judgment on them, or to perpetually enjoin their enforcement, and to exercise, by consent, powers that were not conferred by either the Congress or the fully executed plan.

4. By deciding that the District Court possesses "discretion," in a municipal composition proceeding, to adjudge whether or not Petitioner can recover on securities that were not affected by the fully executed plan of composition, and whether or not he should be released from an injunction perpetually restraining the commencement of actions on securities affected by the plan, the Court of Appeals has so far sanctioned a departure from the accepted and usual course of judicial proceedings in a court of bankruptcy, as to call for the exercise by this Court of its power of supervision.

V

Prayer for Writ

A certified transcript of the entire record of the case in the Circuit Court of Appeals for the Fifth Circuit, accompanies this petition, in compliance with Rule 38 of this Court, and is made a part hereof by reference.

WHEREFORE, Petitioner prays that a writ of certiorari may issue out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said Court of Appeals to certify and send up to this Court a full and complete transcript of the record and proceedings of said Circuit Court of Appeals in the case numbered and entitled on its docket, No. 11209, Ed. C. Wright, Appellant, v. Board of Public Instruction for the County of Broward, State of Florida, Appellee, to the end that said cause may be reviewed and the manifest errors of said Court of Appeals may be revised and corrected, as provided by law; that upon the hearing by this Court, the judgment of said Court of Appeals may be reversed, and that such further proceedings be had herein as may be provided by law and equity.

Respectfully submitted,

MILLER WALTON,
Attorney for Petitioner.

